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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DENA MARIE FARIS-MARSHALL,

Defendant and Appellant.

F056330

(Super. Ct. No. CRF26823)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. Eric L. DuTemple, Judge.

Linda J. Zachritz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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*Before Vartabedian, A.P.J., Hill, J., and Kane, J.

STATEMENT OF CASE

On July 11, 2008, a criminal complaint was filed charging appellant, Dena Marie Faris-Marshall, with felony driving a vehicle while under the influence of drugs or alcohol (Veh. Code, § 23152, subd. (a), count one), felony driving a vehicle while under the influence of drugs or alcohol (Veh. Code, § 23152, subd. (b), count two), and misdemeanor driving with a suspended license (Veh. Code, § 14601.2, subd. (a), count three). The complaint alleged appellant had three prior driving under the influence convictions within seven years of her current offense. (Veh. Code, §§ 23550 & 23550.5) At the conclusion of the preliminary hearing, the court held appellant to answer and deemed the complaint an information.

Prior to the commencement of a jury trial, appellant waived her constitutional rights and admitted the three prior driving under the influence allegations and count three. The jury found appellant guilty of counts one and two. Appellant was found to be in violation of probation in a separate action.

On October 7, 2008, appellant was sentenced in the separate action, a driving under the influence conviction in 2005, to the upper term of three years. The court sentenced appellant on count one in the instant action to a consecutive term of eight months. The court stayed appellant's sentence on count two pursuant to Penal Code section 654. Appellant's total prison term is three years eight months. The court imposed a restitution fine and granted applicable custody credits.

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues and requests this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised she could file her own brief with this court. By letter on May 14, 2009, we invited appellant to submit additional briefing. Appellant replied with a one-page letter rearguing the facts of the case.

FACTS

At 11:33 p.m. on June 26, 2008, Deputy Oliver Ray Imlach of the Tuolumne County Sheriff's Department was on patrol on Tuolumne Road. Just off Tuolumne Road on Hatler Drive, Imlach noticed a light inside a car that appeared to be parked. The car's windshield wipers were also on. The car was parked half-way into the road. Imlach thought it looked suspicious so he contacted the occupants of the car. Appellant was seated in the driver's seat. Daniel Stover was sitting in the front passenger seat.

Imlach asked appellant why she was stopped in the road. Appellant replied that she was test driving the car. Appellant said she had driven it from a friend's house located a quarter mile away at the end of Hatler Drive and ran out of gas.

Imlach explained appellant seemed "like she was out of it." Appellant's speech was slow and slurred. When Imlach asked appellant about her speech, she replied she had been drinking and taking medications. Imlach called for a California Highway Patrol officer (CHP).

Officers Jamie Charles Pullen and Jason Austin of the CHP were dispatched to the scene. When Pullen approached appellant, appellant was sitting in the driver's seat and Stover was in the front passenger seat of a red Mercury Sable. Appellant smelled of alcohol, her eyes were red and watery, and her speech was slurred and slow. Part of appellant's car was on the road, the other part on the shoulder. Appellant told Pullen she was interested in purchasing the Sable.

When Pullen asked appellant if she had been drinking, she replied she had a glass of Irish cream liqueur two-and-a-half hours earlier. Pullen asked appellant to submit to a field sobriety test. Appellant did not perform the field sobriety tests well. Appellant refused to permit a test using a preliminary alcohol screening device. In Pullen's opinion, appellant was under the influence of alcohol and he placed appellant under arrest. Appellant was taken to the hospital where she chose a blood alcohol test. Appellant's blood alcohol tested at .18 percent alcohol by volume.

Stover testified he vaguely remembered being with appellant on June 26, 2008. They left the house to get cigarettes. They borrowed a friend's car about 11:30 p.m. Stover got the keys. Appellant got into the driver's seat. The car would not start, so they coasted it down a hill. Stover nodded off, looked up, and saw a cop.

Appellant testified she and Stover decided to get some cigarettes. Appellant went to Jeanine Beach's home to borrow her car. Beach gave the keys to Stover.¹ Appellant explained the car was never driven. It coasted down the hill without the keys in the ignition. The gas tank was empty. Appellant and Stover were attempting to push start the car. Appellant said she was not sitting in the car because she was pushing it.

On cross-examination, appellant explained she sat in the car with the door open while Stover pushed it. Although the key was not in the ignition, the steering wheel was not locked. Appellant denied telling any investigator that she was interested in purchasing the car. Appellant said she drank about a quarter of bottle of Irish cream liqueur that day.

Appellant argues in her letter brief that she did not have the keys to the car, there were no keys in the ignition, she was forced to drive someone who is homeless, and the car was parked on a dirt road.

In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence -- evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. It is the jury, not the appellate court, which must be convinced of a defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not

¹ Beach testified she gave the keys to Stover.

warrant a reversal of the judgment. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320 and *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

In reviewing a challenge to the sufficiency of the evidence, appellate courts do not determine the facts. We examine the record as a whole in the light most favorable to the judgment and presume the existence of every fact the trier of fact could reasonably deduce from the evidence in support of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Unless the testimony of a single witness is physically impossible or inherently improbable, it is sufficient for a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Appellant is rearguing the facts of her case. On appeal, this court is not permitted to reweigh the evidence considered by the trier of fact. The jury heard testimony from defense witnesses, and rejected it. There was evidence from two law enforcement officers that appellant appeared intoxicated. Appellant failed a field sobriety test and her blood alcohol level was .18 percent. Appellant was found in the driver's seat of the car. There was substantial evidence appellant was operating the vehicle while intoxicated.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.